

111TH CONGRESS  
1ST SESSION

# S. 460

To amend the Agricultural Marketing Act of 1946 to foster efficient markets and increase competition and transparency among packers that purchase livestock from producers.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 2009

Mr. GRASSLEY (for himself and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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## A BILL

To amend the Agricultural Marketing Act of 1946 to foster efficient markets and increase competition and transparency among packers that purchase livestock from producers.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SPOT MARKET PURCHASES OF LIVESTOCK BY**  
4 **PACKERS.**

5 Chapter 5 of subtitle B of the Agricultural Marketing  
6 Act of 1946 (7 U.S.C. 1636 et seq.) is amended—

7 (1) by redesignating section 260 (7 U.S.C.  
8 1636i) as section 261; and

1 (2) by inserting after section 259 the following:

2 **“SEC. 260. SPOT MARKET PURCHASES OF LIVESTOCK BY**  
 3 **PACKERS.**

4 “(a) DEFINITIONS.—In this section:

5 “(1) COVERED PACKER.—

6 “(A) IN GENERAL.—The term ‘covered  
 7 packer’ means a packer that is required under  
 8 this subtitle to report to the Secretary each re-  
 9 porting day information on the price and quan-  
 10 tity of livestock purchased by the packer.

11 “(B) EXCLUSION.—The term ‘covered  
 12 packer’ does not include a packer that owns  
 13 only 1 livestock processing plant.

14 “(2) NONAFFILIATED PRODUCER.—The term  
 15 ‘nonaffiliated producer’ means a producer of live-  
 16 stock—

17 “(A) that sells livestock to a packer;

18 “(B) that has less than 1 percent equity  
 19 interest in the packer, which packer has less  
 20 than 1 percent equity interest in the producer;

21 “(C) that has no officers, directors, em-  
 22 ployees, or owners that are officers, directors,  
 23 employees, or owners of the packer;

24 “(D) that has no fiduciary responsibility to  
 25 the packer; and

1 “(E) in which the packer has no equity in-  
 2 terest.

3 “(3) SPOT MARKET SALE.—

4 “(A) IN GENERAL.—The term ‘spot mar-  
 5 ket sale’ means a purchase and sale of livestock  
 6 by a packer from a producer—

7 “(i) under an agreement that specifies  
 8 a firm base price that may be equated with  
 9 a fixed dollar amount on the date the  
 10 agreement is entered into;

11 “(ii) under which the livestock are  
 12 slaughtered not more than 7 days after the  
 13 date on which the agreement is entered  
 14 into; and

15 “(iii) under circumstances in which a  
 16 reasonable competitive bidding opportunity  
 17 exists on the date on which the agreement  
 18 is entered into.

19 “(B) REASONABLE COMPETITIVE BIDDING  
 20 OPPORTUNITY.—For the purposes of subpara-  
 21 graph (A)(iii), circumstances in which a reason-  
 22 able competitive bidding opportunity shall be  
 23 considered to exist if—

1 “(i) no written or oral agreement pre-  
 2 cludes the producer from soliciting or re-  
 3 ceiving bids from other packers; and

4 “(ii) no circumstance, custom, or  
 5 practice exists that—

6 “(I) establishes the existence of  
 7 an implied contract (as determined in  
 8 accordance with the Uniform Com-  
 9 mercial Code); and

10 “(II) precludes the producer from  
 11 soliciting or receiving bids from other  
 12 packers.

13 “(b) GENERAL RULE.—Of the quantity of livestock  
 14 that is slaughtered by a covered packer during each re-  
 15 porting day in each plant, the covered packer shall slaugh-  
 16 ter not less than the applicable percentage specified in  
 17 subsection (c) of the quantity through spot market sales  
 18 from nonaffiliated producers.

19 “(c) APPLICABLE PERCENTAGES.—

20 “(1) IN GENERAL.—Except as provided in para-  
 21 graph (2), the applicable percentage shall be 25 per-  
 22 cent.

23 “(2) EXCEPTIONS.—In the case of a covered  
 24 packer that reported to the Secretary as part of the  
 25 2008 annual report required under section 415 of

1 the Packers and Stockyards Act, 1921 (7 U.S.C.  
 2 228d) that more than 75 percent of the livestock of  
 3 the covered packer were captive supply livestock, the  
 4 applicable percentage shall be the greater of—

5 “(A) the difference between the percentage  
 6 of captive supply so reported and 100 percent;  
 7 and

8 “(B)(i) during calendar year 2010, 10 per-  
 9 cent;

10 “(ii) during calendar year 2011, 15 per-  
 11 cent; and

12 “(iii) during calendar year 2012 and each  
 13 calendar year thereafter, 25 percent.

14 “(d) NONPREEMPTION.—Notwithstanding section  
 15 259, this section does not preempt any requirement of a  
 16 State or political subdivision of a State that requires a  
 17 covered packer to purchase on the spot market a greater  
 18 percentage of the livestock purchased by the covered pack-  
 19 er than is required under this section.

20 “(e) RELATIONSHIP TO OTHER PROVISIONS.—Noth-  
 21 ing in this section affects the interpretation of any other  
 22 provision of this Act, including section 202.”.

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